

## Devadhaantu Insights – September 2020



Dear Reader,

Greetings!

We are happy to present the Devadhaantu Insights highlighting important legislative updates in direct taxes and regulatory updates in SEBI and Corporate laws.

We hope that we are able to provide an insight into various updates that you would find to be informative as well as useful.

Happy Reading!

Devadhaantu Advisors

## Thank You

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# DIRECT TAX UPDATES

SEPTEMBER 2020

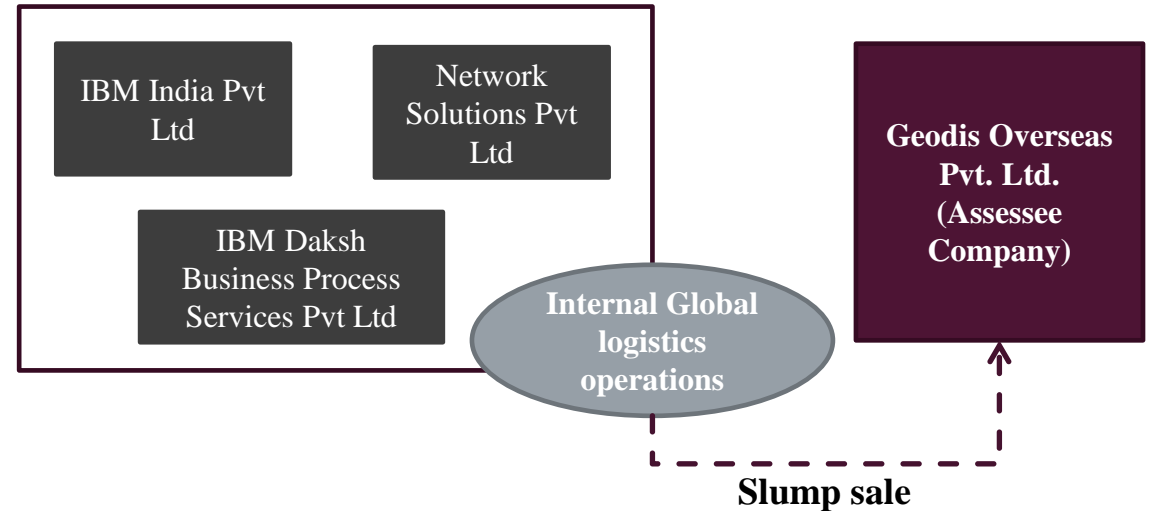


## Direct tax updates

### Depreciation allowable on workforce value, supplier contracts and other business rights acquired as part of acquisition of business

Assessee-company acquired IBM’s internal global logistics operations with IBM group entities and recorded goodwill on the acquisition of business and claimed depreciation on it. The assessee argued that the goodwill represents value of workforce value, supplier contracts and other business rights acquired on the acquisition of business from IBM but the AO was not satisfied by the assessee’s argument and disallowed the depreciation claimed by assessee.

Hon’ble Delhi ITAT, relying on the judgement of Hon’ble Delhi High Court in the case of Areva T&D India Ltd<sup>2</sup>, **held that the value of workforce value, supplier contracts and other business rights acquired on the acquisition of business is eligible for depreciation under section 32 of the ITA.** Hon’ble Delhi High Court in the case of Areva T&D India Ltd had held that business claims, business information, business records, contracts, employees and know how acquired by assessee under Slump Sale agreement are in nature of ‘business or commercial rights of similar nature’ specified section 32(1)(ii) and are accordingly eligible for depreciation.



**Depreciation allowed on workforce value, supplier contracts and other business rights received as part of business undertaking**

<sup>1</sup> Geodis Overseas Pvt. Ltd vs DCIT [TS-422-ITAT-2020(DEL)]

<sup>2</sup> Areva T&D India Ltd vs DCIT [345 ITR 421 (2012) (Delhi)]

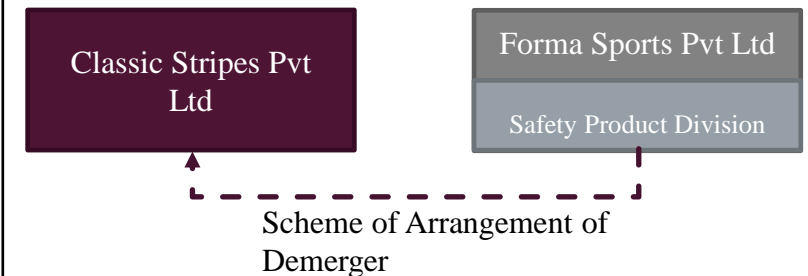


## Direct tax updates

### Depreciation allowed on 'goodwill' representing the difference between amount of negative net worth of a loss-making division and the face value of equity shares issued on merger of that division<sup>1</sup>

Classic Stripes Pvt Ltd ('the Assessee Company') had claimed depreciation during the AY 2010-11 on the goodwill arising on account of demerger of safety products division of M/s Forma Sports Pvt. Ltd. (FSPL) with the Assessee Company as per the Scheme of Arrangement under the Companies Act 1956, which was duly approved by the Hon'ble Bombay High Court. The Revenue department noted that Safety Division of M/s Forma Sports Pvt Ltd was a consistent loss-making division and therefore, disallowed the claim of depreciation on goodwill on merits.

The Revenue department argued that goodwill in the instant case arose on revaluation of properties. Hon'ble Mumbai ITAT stated that Goodwill would arise on account of various factors such as continuing clients, continuing business & relationship, established set up for smooth conduct of business, continuing business, commercial and industrial rights and licenses to the successor company / merged entity. These commercial, business and industrial rights were duly acquired by the Assessee Company through the Scheme of amalgamation and due consideration was passed on for the same by way of allotment of shares. Hence, the same would factually tantamount to acquisition of goodwill. Further, Hon'ble Mumbai ITAT, relying on the decision of Hon'ble Supreme Court in the case of Smifs Securities Ltd<sup>2</sup> which specifically held that goodwill arising on account of amalgamation would constitute intangible asset eligible for depreciation under Section 32 of the Act, held that the assessee was entitled to depreciation in instant case.



- Safety Product Division
- Loss making
  - Assets revalued prior to demerger
  - Upon demerger recorded Goodwill in the books of Assessee Company

<sup>1</sup> Classic Stripes Pvt. Ltd [TS-413-ITAT-2020(Mum)]

<sup>2</sup> CIT vs Smif Securities Limited (2012) 348 ITR 302 (SC)

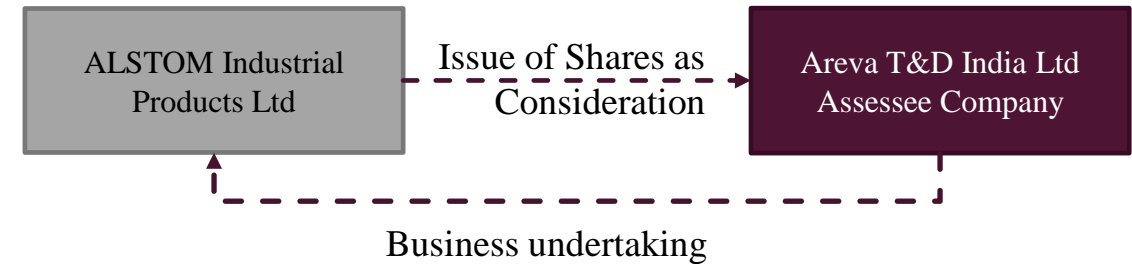


## Direct tax updates

### slump exchange cannot be subject to capital gains under section 2(42C) read with Sec.50B<sup>1</sup>

Areva T&D India Ltd (Assessee Company) has transferred its non-T&D business to M/s. ALSTOM Industrial Products Ltd under a scheme of arrangement. In exchange M/s. ALSTOM Industrial Products Ltd issued equity shares as consideration.

Hon'ble Madras HC, relying on the judgement of Hon'ble Bombay HC in Bharat Bijlee's case<sup>2</sup>, held that the excess consideration received on the transfer of the non-T&D business could not be considered as a slump sale and therefore could not be giving rise to capital gains u/s.50B as there was no sale consideration in monetary terms, but the whole transaction was one of exchange wherein the value was paid by way of issuance of shares.



<sup>1</sup> Areva T&D India Ltd vs CIT [Tax case appeal no. 673 of 2018 decision dated September 8, 2020]

<sup>2</sup> Bharat Bijlee Limited [TS-270-HC-2014(BOM)]



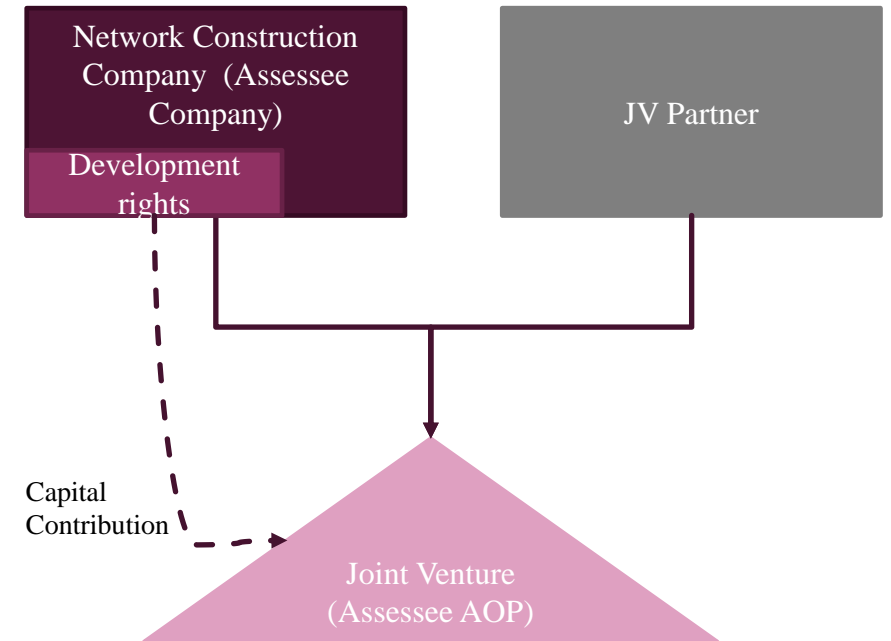
## Direct tax updates

### Section 50C is not applicable on development rights when same are contributed as capital in an AOP by a member

Assessee-company purchased development rights in respect of 7 buildings. This development right in respect of three buildings was shown on the asset side of the Balance sheet under the head ‘Investments’ as on March 31, 2010. Subsequently, the assessee entered into a Joint Venture agreement (AOP) and agreed to contribute the said development right as ‘capital contribution’.

The revenue authorities treated the transfer of the development rights under section 50C which talks about the stamp duty valuation as the minimum value for the purpose of computing capital gains. However, the assessee’s view was that a contribution into a AOP should be governed by the provisions of Section 45(3) which provides that the amount recorded by the AOP in its books shall be the basis for computing capital gains.

The Mumbai ITAT held that section 45(3) is a charging provision having two limbs joined by conjunction “AND”. The first limb is a charging provision which levies capital gain tax on gains arising from contribution of capital asset in the AOP by a member and second limb is an essential deeming fiction for determining the value of consideration without which the charging provision would fail. However, section 50C of the Act only deems the value of consideration for the purpose of calculating capital gains in the transfer of capital asset from one person to another. The provisions of section 50C of the Act are not applicable in the instant case and provision of section 45(3) of the Act will be applied, basis of the principle that a special provision overrides the general.



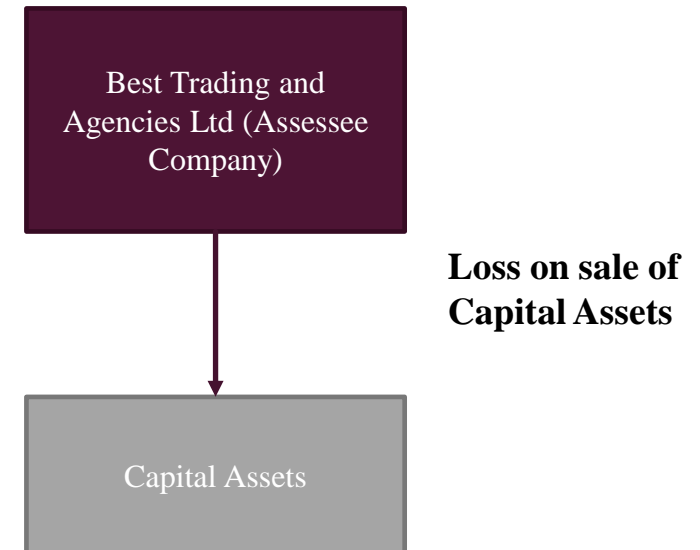


## Direct tax updates

### Indexation benefit on the cost of capital allowed while calculating book profit under ‘MAT’<sup>1</sup>

Best Trading and Agencies Ltd (‘the Assessee Company’) was a special purpose vehicle holding non-manufacturing and liquid assets including real estate of Kirloskar Electric Company Ltd under an arrangement approved by the court. The Assessee Company has declared loss in AY 2005-06 and AO assessed the assessee on book profits u/s115JB without giving the benefit of indexation on the cost of capital asset sold during the year.

Hon’ble Karnataka HC noted that by virtue of Section 115JB(5), the application of other provisions of the Act were open, except if specifically barred by the Section itself. HC observed that there was no provision in the Act to prevent the assessee from claiming indexed cost available under Section 48 of the Act of acquisition on the sale of asset in case, where the assessee was subjected to Section 115JB of the Act. The difference between the sale consideration and the indexed cost of acquisition represents the actual cost of the assessee. Denial of the benefit of indexed cost of acquisition will result in taxing the income other than actual / real income. There is no provision in the Act to prevent the taxpayer from claiming indexed cost of acquisition on the sale of asset where the taxpayer is subjected to the provisions of MAT under section 115JB of the Act. Accordingly, assessee was eligible to claim the benefit of indexed cost of acquisition.



**While calculating Book Profit for the purposes of MAT liability, indexation benefit allowed on cost of capital assets**

<sup>1</sup> DCIT vs Best Trading and Agencies Ltd [ITA No. 36/Bang/2010 (Karnataka)]



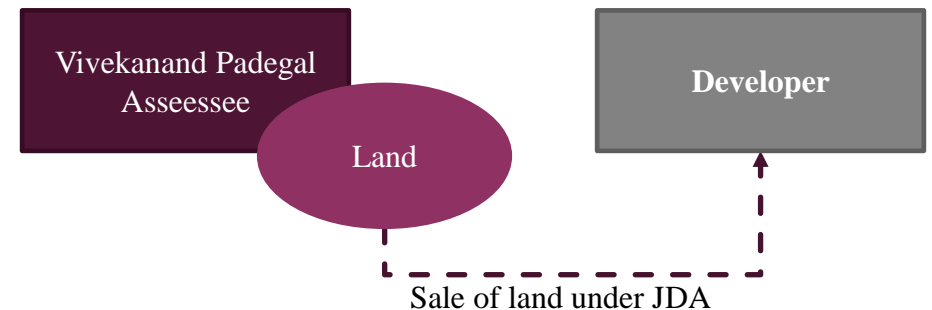
## Direct tax updates

### While computing capital gains under Joint Development Agreement, Guidance value of land to be taken into consideration instead of actual cost of construction of development<sup>1</sup>

Assessee entered into a JDA for sale of land to a developer and in consideration he would receive 50% of super built up area in the form of commercial complex.

Assessee filed return of income computing Long Term Capital Gain (LTCG) in respect of the sale of land given for joint development taking guidance value of the land on the date of Joint Development Agreement. However, AO considered actual cost of construction to be incurred by developer and computed the capital gain accordingly.

The matter went to the ITAT, and ITAT held that in the facts of the present case, section 50D of the Act was applicable because the consideration to be received by the assessee was 50% of super built up area in the form of commercial complex etc. to be constructed by the builder and therefore, ITAT held that “such cost of construction to be constructed in future cannot be determined in the year of transfer”.



<sup>1</sup> Vivekanand Padegal vs ACIT [ITA No. 923/Bang/2018 dated September 4, 2020





## Direct tax updates

### Tax Collection at Source ('TCS') broadened to cover additional transactions w.e.f October 1, 2020

Finance Act, 2020 has broadened the scope of tax collection at source under section 206C of the Income-tax Act, 1961 (the ITA) w.e.f. October 1, 2020 and to cover the following additional transaction under the ambit of TCS.

- a. An authorised dealer receiving an amount or an aggregate of amounts of Rs. 7,00,000 or more in a financial year for remittance out of India under the 'Liberalised Remittance Scheme' of RBI (5%);
- b. A seller of an overseas tour program package (5%);
- c. A seller of goods (if his turnover exceeds 10 cr in the immediately preceding financial year) on consideration received from a buyer (excluding exports) in a financial year in excess of fifty lakh rupees (0.1%).

The amount of TCS can be set off against tax payable; in a sense, it is like tax paid in advance.

# CORPORATE LAW UPDATES

SEPTEMBER 2020

## Corporate Law updates



### **Business Responsibility and Sustainability Report [with the objective to have ‘a Single source for all Non-Financial Disclosures’]: Suggestion by MCA appointed committee (1/2)**

MCA released the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business (NVGs), in 2011. It provided guidance to businesses on what constitutes responsible business conduct which were revised and released as the National Guidelines on Responsible Business Conduct (NGRBC) in 2019.

In efforts to have a single source for all non-financial disclosures by corporates, MCA appointed committee has recommended a Business Responsibility Report be called the Business Responsibility and Sustainability Report (BRSR). The Committee also proposes two formats for disclosures: a comprehensive format and a Lite version.

#### **Structure of the BRSR Framework**

The BRSR has three sections and the purpose and structure of each of these three sections is given below:

- Section A: General Disclosures: The objective of this section is to obtain basic information about the company
- Section B: Management and Process: Here the company is required to disclose information on policies and processes relating to the NGRBC Principles concerning leadership, governance, and stakeholder engagement



## Corporate Law updates

### **Business Responsibility and Sustainability Report [with the objective to have ‘a Single source for all Non-Financial Disclosures’]: Suggestion by MCA appointed committee (2/2)**

- Section C: Principle-wise performance: Responses to Section C indicate how a company is performing in respect of each Principle and Core Element of the NGRBCs. The questions in this section have been divided into two categories:
  - a) Essential: Those that are mandatory for all companies.
  - b) Leadership: Those that are voluntary and which provide an opportunity for companies to present their impacts and outcomes

#### **BRSR Lite version**

A pared down version of the BRSR format has been proposed, to make it easier for all smaller companies to begin reporting on sustainability reporting related issues. This again has the Essential and Leadership category of questions, but fewer in number, and seeks information which such companies should be able to provide.

## Corporate Law updates



### MCA amended Schedule VII and Companies (CSR) Rules, 2015 to include COVID-19 related activities in the ambit of CSR

MCA vide its circular dated August 24, 2020 has increased the activities which may be included by the Company in their CSR Activities. Now, Companies may also contribute the CSR amount towards the following:

- a. R&D projects in the field of Science, Technology, Engineering and Medicine funded by the Central Government or State Government or any agency or PSU of the Central Government or State Government;
- b. Autonomous Bodies established by the Department of Pharmaceuticals and Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH)

Further, by virtue of amendment in Companies(Corporate Social Responsibility Policy) Rules, 2015, any Company engaged in research and development activity of new vaccine, drugs and medical devices in its normal course of business, may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22 and 2022-23, subject to the following conditions:

- a. such research and development activities are carried out in collaboration with any of the institutes or organizations mentioned in item (ix) of Schedule VII to the Act; and
- b. details of such activity are disclosed separately in the Annual Report on CSR included in the Board's Report.

# SECURITIES AND EXCHANGE BOARD OF INDIA (‘SEBI’) UPDATES

SEPTEMBER 2020



## SEBI Regulatory updates

**SEBI implements the automated system for disclosures required under Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 ('PIT Regulations')** [Circular no. SEBI/HO/ISD/ISD/CIR/P/2020/168 dated September 9, 2020]

SEBI, vide circular dated September 9, 2020, implemented the system driven disclosures in PIT Regulations and the procedure for implementation is as follows:

- a. The various formats and timelines for sharing of data shall be standardized, as agreed upon by the depositories and exchanges.
- b. Listed company to provide the information including PAN of the promoter group, designated persons and directors to the designated depository. The information shall be provided within 10 days from the date of this circular.
- c. The designated depository shall share the information received from the listed company with another depository.
- d. In case of any subsequent update, the listed company to update the information with the designated depository on the same day.
- e. Based on the PAN of First holder/Demat number(s), the depositories shall tag such Demat accounts in their depository systems at ISIN level.
- f. The designated depository shall also share with the stock exchanges, company-wise details of entities. In case of PAN exempt entity, respective depository shall share the Demat account number(s) details with the stock exchanges.
- g. The depositories shall provide the specified data pertaining to the tagged Demat account(s) separately to the stock exchanges on daily basis.
- h. Based on above, stock exchanges will identify the transactions carried out on their trading system.
- i. Such identified trades to be shared by the stock exchange with all other stock exchanges where the company is listed on daily basis.
- j. In case of any discrepancy, the issue shall be resolved by listed company, stock exchanges and depositories in coordination with one another.<sup>15</sup>

# RESERVE BANK OF INDIA ('RBI') UPDATES

SEPTEMBER 2020





## RBI Regulatory updates

### RBI issues a framework to authorize a Pan-India Umbrella Entity for Retail Payments

RBI issued a Framework to set-up Pan-India umbrella entity / entities focusing on retail payment systems on August 18, 2020. This framework contains norms with respect to Capital requirement, eligible activities, eligibility of Promoters, Procedure for application and its processing. RBI has invited applications from eligible companies by February 26, 2021.

Following are some key parameters: -

- a. Such entity to be a 'for-profit' or a Section 8 Company incorporated in India under the Companies Act, 2013.
- b. The umbrella entity shall be a Company authorised by Reserve Bank of India (RBI) under Section 4 of the PSS Act, 2007.
- c. Promoters must be Resident as per FEMA having 3 years' experience in the payments ecosystem as Payment System Operator (PSO) / Payment Service Provider (PSP) / Technology Service Provider (TSP).
- d. Any entity holding more than 25% of the paid-up capital of the umbrella entity shall be deemed to be a Promoter.
- e. The Promoters / Promoter Groups, to be in conformity with the Reserve Bank's 'fit and proper' criteria.
- f. The umbrella entity to have a minimum paid-up capital of INR 500 crore. No single Promoter / Promoter Group to have more than 40% investment in the capital of the umbrella entity.
- g. A minimum net-worth of INR 300 crore shall be maintained at all times.
- h. The umbrella entity to conform to the norms of corporate governance along with 'fit and proper' criteria for persons to be appointed on its Board.

# STAMP DUTY UPDATES

SEPTEMBER 2020

## STAMP DUTY UPDATES



### Reduction in rate of stamp duty on transfer of immovable Property in Maharashtra

The Maharashtra Government has vide notification<sup>19</sup> dated August 28, 2020 reduced the stamp duty chargeable under Article 25(b) of Schedule-I appended to the said Act, on the instrument of Conveyance or Agreement to sell of any immovable property by;

- ❑ 3% in Mumbai District and Mumbai Sub-Urban District, and by 2% in Rest of the State of Maharashtra for the period starting from September 1, 2020 and ending on December 31, 2020 and
- ❑ 2% in Mumbai District and Mumbai Sub-Urban District and by 1.5% in Rest of the State of Maharashtra, for the period starting from January 1, 2021 and ending on March 31, 2021.